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German High Court Backs Spiegel Raid

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BONN, Aug. 5—Middle-of-the-night police raids and arrests of the kind conducted against the news magazine Der Spiegel and its staff four years ago do not violate West Germany's Constitution, the Federal Constitutional Court ruled today in a close decision.

The 96-page decision ruled that there was sufficient suspicion that an article in Der Spiegel on the armed forces had overstepped the boundary between the right of the public to information and the need for military secrecy.

In handing down its decision, the court rejected a charge by Der Spiegel that the West German Government acted illegally in ordering a search-and-seizure operation in the magazine's of-

fices in Hamburg in the early morning hours of Oct. 27, 1962.

The ruling was awaited with great interest because the Spiegel affair had been compared with the midnight Gestapo raids that terrified the country during the Nazi era. The constitutional case was also regarded as an important test of press freedom in West Germany.

Four of the eight Constitutional Court judges did rule that the raid on the Spiegel offices and the subsequent arrests of the publisher and members of his staff were illegal. However, a majority vote of the court is required before a constitutional violation can be declared.

The Government ordered the police action against Der Spiegel after the magazine had pub-

lished an article containing detailed information about alleged shortcomings in the West German armed forces.

Rudolf Augstein, publisher of the magazine, one of the most influential and widely read in the country, was arrested with members of his staff and several of their informants. The Government had obtained a warrant for their arrest on suspicion of treason and "criminal gathering of misinformation."

Defense Minister Resigned

Because of the inevitable comparison of the predawn police raid with methods employed by the Nazis, the Spiegel affair produced a major furor. A subsequent Government crisis over the role played by the then Defense Minister, Franz Josef Strauss, in the move against the magazine led to Mr. Strauss's resignation.

Most of the criminal charges against Mr. Augstein and his associates have long since been dismissed. Only one member of the magazine's staff and one former army officer are still under investigation.

The four members of the court in Karlsruhe who held that the police action against Der Spiegel was unconstitutional declared that the search-and-seizure operation was a basic violation of freedom of the press.

However, the court ruled that the press was subject to treason laws and that the Government had had sufficient grounds to suspect the magazine had committed treason. Therefore the Government had not acted improperly in ordering the police raid.

However, noting the absence of adequate laws to cover cases of confiscation and other related matters, the court urged that restraint be exercised in future criminal proceedings against the press.

The court also said the relationship between journalists and their sources should not be jeopardized.

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